



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R01-OAR-2021-0790; FRL- 9265-01-R1]

#### Outer Continental Shelf Air Regulations; Consistency Update for Massachusetts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; consistency update.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Massachusetts is the designated COA. The intended effect of approving requirements of the Massachusetts Department of Environmental Protection is to regulate emissions from OCS sources in accordance with the requirements for onshore sources. The Commonwealth of Massachusetts' requirements discussed in this document are proposed to be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2021-0790 at <https://www.regulations.gov>, or via email to [wortman.eric@epa.gov](mailto:wortman.eric@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once

submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air & Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the “**FOR FURTHER INFORMATION CONTACT**” section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Eric Wortman, Air and Radiation Division, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (Mail Code 05-2), Boston, MA 02109, (617) 918-1624, [wortman.eric@epa.gov](mailto:wortman.eric@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background and Purpose**

On September 4, 1992, the EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to the EPA to be considered for incorporation by reference in 40 CFR part 55. This proposed action is being taken in response to the submittal of a NOI on September 9, 2021 by Sunrise Wind, LLC. Public comments received in writing within 30 days of publication of this document will be considered by the EPA before publishing a final rule.

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<sup>1</sup> The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Section 328(a) of the CAA requires that the EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits the EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents the EPA from making substantive changes to the requirements it incorporates. As a result, the EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of the EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by the EPA for inclusion in the SIP.

## **II. EPA's Evaluation**

In updating 40 CFR part 55, the EPA reviewed the rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, the EPA has excluded administrative or procedural rules,<sup>2</sup> and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

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<sup>2</sup> Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where the EPA has not delegated authority to implement and enforce part 55, the EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

The EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Region Office listed in the **ADDRESSES** section of this *Federal Register*.

### **III. Proposed Action**

EPA last completed a consistency update for Massachusetts on November 13, 2018 (83 FR 56259). In that action, EPA incorporated by reference into 40 CFR 55 all Massachusetts regulations that EPA believed were relevant to the OCS requirements. For this action, EPA has reviewed changes that Massachusetts has made to its underlying regulatory programs since the last consistency update for Massachusetts. This action will have no effect on the provisions of 310 CMR 8.00 that were not subject to changes by Massachusetts and were also previously incorporated by reference into part 55 through EPA's November 13, 2018 rulemaking.

The EPA is proposing to incorporate the rules potentially applicable to sources for which the Commonwealth of Massachusetts will be the COA. The rules that the EPA proposes to incorporate are applicable provisions of (1) 310 Code of Massachusetts Regulations (CMR) 4.00: Timely Action Schedule and Fee Provisions; (2) 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; and (3) 310 CMR 7.00: Air Pollution Control as amended through March 5, 2021. The rules that EPA proposes to incorporate in this action will replace the provisions of 310 CMR 4.00, 310 CMR 6.00, and 310 CMR 7.00 that were previously incorporated into 40 CFR part 55 for Massachusetts. *See* 83 FR 56259; November 13, 2018.

With respect to the Air Pollution Control regulations at 310 CMR 7.00, Massachusetts is divided into six regions known as air pollution control districts, three of which (Merrimack

Valley, Metropolitan Boston, and Southeastern Massachusetts) are coastal.<sup>3</sup> Many of the specific provisions of the Air Pollution Control regulations are limited to certain air pollution control districts, or apply differently in different air pollution control districts.

In interpreting such provisions as they are incorporated into 40 CFR part 55, the EPA proposes to treat any existing or proposed OCS source as if it were located in the specific air pollution control district that is geographically closest to the source. The EPA is relying on this interpretation for purposes of this action. If the EPA does not receive comments to the contrary from any party during the public comment period, the interpretation stated above will represent the EPA's formal interpretations of the provisions incorporated into 40 CFR part 55 for the purposes of federal law.

The interpretation discussed above is consistent with the interpretation of the Commonwealth of Massachusetts regulations in prior Agency actions for the purpose of consistency updates under 40 CFR part 55. *See* 83 FR 5971 (February 12, 2018) and 73 FR 10406 (February 27, 2008).

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Code of Massachusetts Regulations rules set forth below. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 1 Regional Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

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<sup>3</sup> These districts are not associated with separate air pollution control agencies; they are purely conceptual.

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by the EPA. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments or preempt tribal law.

This action does not impose any new information collection burden under the Paperwork Reduction Act. *See* 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulation at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249.<sup>4</sup> This action does not impose a new information burden under the Paperwork Reduction Act because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A.

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<sup>4</sup> OMB's approval of the ICR can be viewed at [www.reginfo.gov](http://www.reginfo.gov).



**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 10, 2021.

Deborah Szaro,  
Acting Regional Administrator,  
EPA Region 1.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

## **PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS**

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(11)(i)(A) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.**

\* \* \* \* \*

(e) \* \* \*

(11) \* \* \*

(i) \* \* \*

(A) Commonwealth of Massachusetts Requirements Applicable to OCS Sources, March 5, 2021.

\* \* \* \* \*

3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading “Massachusetts” to read as follows:

APPENDIX A TO PART 55 – LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE

\* \* \* \* \*

MASSACHUSETTS:

(a) \* \* \*

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, March 5, 2021, Commonwealth of Massachusetts – Department of Environmental Protection.

The following sections of 310 CMR 4.00, 310 CMR 6.00, 310 CMR 7.00 and 310 CMR 8.00:

310 CMR 4.00: TIMELY ACTION SCHEDULE AND FEE PROVISIONS

Section 4.01: Purpose, Authority and General Provisions (Effective 5/1/2020)

Section 4.02: Definitions (Effective 5/1/2020)

Section 4.03: Annual Compliance Assurance Fee (Effective 5/1/2020)

Section 4.04: Permit Application Schedules and Fee (Effective 5/1/2020)

Section 4.10: Appendix: Schedules for Timely Action and Permit Application Fees (Effective 5/1/2020)

310 CMR 6.00: AMBIENT AIR QUALITY STANDARDS FOR THE COMMONWEALTH OF MASSACHUSETTS

Section 6.01: Definitions (Effective 6/14/2019)

Section 6.02: Scope (Effective 6/14/2019)

Section 6.03: Reference Conditions (Effective 6/14/2019)

Section 6.04: Standards (Effective 6/14/2019)

310 CMR 7.00: AIR POLLUTION CONTROL

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 3/5/2021)

Section 7.01: General Regulations to Prevent Air Pollution (Effective 3/5/2021)

Section 7.02: U Plan Approval and Emission Limitations (Effective 3/5/2021)

Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 3/5/2021)

Section 7.04: U Fossil Fuel Utilization Facilities (Effective 3/5/2021)

Section 7.05: U Fuels All Districts (Effective 3/5/2021)

Section 7.06: U Visible Emissions (Effective 3/5/2021)

Section 7.07: U Open Burning (Effective 3/5/2021)

Section 7.08: U Incinerators (Effective 3/5/2021)

Section 7.09: U Dust, Odor, Construction and Demolition (Effective 3/5/2021)

Section 7.11: U Transportation Media (Effective 3/5/2021)

Section 7.12: U Source Registration (Effective 3/5/2021)

Section 7.13: U Stack Testing (Effective 3/5/2021)

Section 7.14: U Monitoring Devices and Reports (Effective 3/5/2021)

Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 3/5/2021)

Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOX) (Effective 3/5/2021)

Section 7.24: U Organic Material Storage and Distribution (Effective 3/9/2018)

Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 3/5/2021)

Section 7.26: Industry Performance Standards (Effective 3/5/2021)

Section 7.60: U Severability (Effective 3/5/2021)

7.70: Massachusetts CO Budget Trading Program (Effective 3/5/2021)

7.71: Reporting of Greenhouse Gas Emissions (Effective 3/5/2021)

7.72: Reducing Sulfur Hexafluoride Emissions from Gas-insulated Switchgear (Effective 3/5/2021)

Section 7.00: Appendix A (Effective 3/5/2021)

Section 7.00: Appendix B (Effective 3/5/2021)

Section 7.00: Appendix C (Effective 3/5/2021)

310 CMR 8.00: THE PREVENTION AND/OR ABATEMENT OF AIR POLLUTION EPISODE AND AIR  
POLLUTION INCIDENT EMERGENCIES

Section 8.01: Introduction (Effective 3/9/2018)

Section 8.02: Definitions (Effective 3/9/2018)

Section 8.03: Air Pollution Episode Criteria (Effective 3/9/2018)

Section 8.04: Air Pollution Episode Potential Advisories (Effective 3/9/2018)

Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 3/9/2018)

Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 3/9/2018)

Section 8.07: Emission Reductions Strategies (Effective 3/9/2018)

Section 8.08: Emission Reduction Plans (Effective 3/9/2018)

Section 8.15: Air Pollution Incident Emergency (Effective 3/9/2018)

Section 8.30: Severability (Effective 3/9/2018)

(2) [Reserved]

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